

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**RSA No.2373 of 2011 (O&M)  
Date of Order: 10.10.2017**

**Pohap Singh**

**..Appellant**

**Versus**

**Meena Ram and others**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Jai Vir Yadav, Advocate,  
for the appellant.

Mr. D.S.Nirbhan, Advocate,  
for the respondents.

**ANIL KSHETARPAL, J (Oral)**

Defendant No.1-appellant is in regular second appeal against the judgment of reversal.

Learned first appellate Court has accepted the appeal simply on the basis of one line, the alleged admission of defendant-appellant, in cross-examination.

Learned first appellate Court has not adverted to the findings arrived at by the trial Court and has not even given the reasons why the findings of the trial Court is erroneous.

Plaintiff had filed a suit for declaration, challenging the decree suffered by his father Ganeshi in favour of Pohap Singh, the appellant (son of Ganeshi) on 17.09.1994. Plaintiff had also challenged the release deed executed by Pohap Singh, in favour of his brothers, namely, other sons (defendants no.2 to 4 except plaintiff) of Ganeshi with respect to land measuring 7 kanals 4 marlas. Plaintiff filed a suit in September, 2000,

challenging the decree and the release deed on the ground that the property is Joint Hindu Family Ancestral Coparcenary property and, therefore Ganeshi had no right to suffer the decree or any other orders alienating the suit property in favour of remaining brothers, excluding the plaintiff.

The suit filed by the plaintiff was contested. Defendants pleaded that the property is not ancestral. It was pleaded that in fact Meena Ram, the plaintiff was assigned the duty to sell the property of one Shyampal and it was agreed as per family settlement that the proceed with the aforesaid sale deed would be distributed amongst all the brothers. It is not in dispute that Meena Ram executed two sale deeds on the basis of General Power of Attorney of Shyampal on 22.06.2000. It is the case of the defendants that Meena Ram did not pay the amount as per the family settlement and, therefore, Ganeshi entered into a family settlement and in accordance with the family settlement property first transferred to Pohap Singh and thereafter in parts to defendant nos. 2 to 4.

Learned trial Court after appreciating the evidence available on the file, recorded a findings of fact that the property is not proved to be ancestral. Learned trial Court held that the plaintiff has to stand on his own legs. Plaintiff has failed to lead any evidence to prove that the property was ancestral Joint Hindu Family Coparcenary.

Plaintiff filed the first appeal. Learned first appellate Court after picking up one line in the cross examination of Pohap Singh, reversed the judgment on the ground that defendant no.1-appellant has admitted in cross- examination that the property is “Dadalie” (that property has been inherited from grand father).

Learned first appellate Court did not even advert to the findings

arrived at by the trial Court. Learned first appellate Court did not discuss either the pleadings or the evidence lead by the parties. The entire judgment of the first appellate Court revolves upon the alleged admission of defendant no.1-appellant.

Taking into consideration that the first appellate Court has failed to discuss the evidence brought in by the parties and failed to give issue wise findings, the judgment of the first appellate Court cannot be sustained. The learned first appellate Court has also failed to discuss the fact that some property had come to Ganeshi from his sister, therefore, the aforesaid property cannot be said to be ancestral Joint Hindu Family Coparcenary Property. At the cost of repetition first appellate Court has just overlooked the entire record as well as the finding arrived at by the learned trial Court, therefore, the judgment passed by the first appellate Court is clearly not only erroneous but perverse.

In these circumstances, in my considered opinion, the present appeal deserves to be accepted and the judgment passed by the first appellate court is liable to be set aside. The case is remitted back to the first appellate Court to decide the case afresh after re-appreciating the evidence available on the file, in accordance with law.

**October 10, 2017**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No